REMARKS

Claims 1-7 and 39 were pending in the application. Claim 39 is withdrawn in accordance with the Examiner's decision of page 2 of the Office Action. Claim 7 has been amended. Upon entry of these amendments, Claims 1-7 and 39 will be pending, with Claims 1-7 under active consideration. Claims 1, 7, and 39 are independent.

Applicants submit respectfully that the amendments presented herein are supported fully by the claims and/or specification as originally filed and, thus, do not represent new subject matter.

Claim 7 has been amended to point out more particularly and claim more distinctly that which Applicants regard as their invention by now reciting "and further comprising associated buffers, vials, supplemental reagents, or any combination thereof." The amendment of Claim 7 finds support in the specification at page 21, lines 1-2.

Applicants respectfully request entry of the amendments and remarks made herein into the file history of the present invention. Reconsideration and withdrawal of the rejections set forth in the above-identified Office Action are respectfully requested.

I. The Rejections Under 35 U.S.C. § 102(b) Should Be Withdrawn

A. The Rejections Over Kettman

The Office Action, at pages 6 and 7-8, rejects Claims 1-7 as allegedly being anticipated by Kettman *et al.*, of record (hereinafter, "Kettman"), under 35 U.S.C. § 102(b) for the reasons of record. The Office Action alleges that Kettman is

a proper 102(b) reference because Applicants are allegedly not entitled to the priority date of Provisional Application 60/153,941. Applicants traverse respectfully.

Respectfully, Applicants do not concede the propriety of the Office Action's allegation that Applicants are not entitled to the priority date of Provisional Application 60/153,941. Applicants respectfully direct the Examiner to the arguments presented in section B, below, in support of the earlier priority date. Accordingly, Kettman is not to be considered a proper 102(b) reference.

However, even assuming that the denial of the earlier priority date is proper, Applicants submit respectfully that Claims 1-7, as amended, are *still not* anticipated by Kettman under 35 U.S.C. § 102(b) because Kettman was published in October, 1999, and Applicants' present application was filed September 15, 2000, *i.e.*, 11 months subsequent to the publication of Kettman. Thus, Kettman was not publicly available more than one year prior to the application date of the present application as is required under 35 U.S.C. § 102(b). Accordingly, Applicant requests respectfully that the rejection to Claims 1-7 over Kettman under 35 U.S.C. § 102(b) be withdrawn.

B. The Rejection Over WO 99/19515

The Office Action, at pages 6-7, rejects Claims 1-7 as allegedly being anticipated by Published International Patent Application WO 99/19515, of record, under 35 U.S.C. § 102(b) for the reasons of record. Applicants traverse respectfully.

Applicants submit respectfully that Claims 1-7, as amended, are not anticipated by WO 99/19515 because WO 99/19515 is not a proper 102(b) reference. Respectfully, Applicants dispute the propriety of the Office Action's denial to Applicants' of the priority

date of Provisional Application 60/153,941, as stated at pages 5-6 of the Office Action. Citing *In re Seversky* for the proposition that *mere reference* to another application does not constitute incorporation of that reference, the Office Action alleges that priority is not proper because Provisional Application 60/153,941, while referring to WO 99/19515 as a source of teaching with regard to technologies required to practice the present invention, does not incorporate WO 99/19515 into its disclosure for purposes of 35 U.S.C. § 112 (first paragraph). Applicants disagree respectfully.

Applicants submit respectfully that a *per se* statement of incorporation of a reference is not an absolute requirement for the purposes of 35 U.S.C. § 112 (first paragraph). Applicants submit respectfully that one skilled in the art would be directed clearly and unambiguously to refer to WO 99/19515, as well as the other references provided by Applicants at page 5, lines 14-23, of Provisional Application 60/153,941, by the language used to describe the importance of those documents. The Examiner's attention is directed to lines 14-15 which recite, "the level of biochemical screening proposed for this project ***can only be performed by technology*** developed by Luminex and ***disclosed as published patent applications*** ..." (emphasis added, please note that WO 99/19515 is one of the published patent applications referenced). At lines 21-23, Applicants reinforce the importance of these references by reciting, "In ***this*** application, ***this technology will be referred to*** as the 'Luminex' technology ..." (emphasis added). In other words, the language present in Provisional Application 60/153,941directing one skilled in the art to WO 99/19515 is substantially more than the *mere reference* of *Seversky.* One skilled in the art would understand perfectly that the recited references should, and indeed *must*, be consulted to resolve technological

issues with regard to the practice of the present invention. No *per se* incorporation of the reference is necessary.

In view of the above, Applicants submit respectfully that the priority date of September 15, 1999, the filing date of Provisional Application 60/153,941, is the proper priority date for the present application. Thus, WO 99/19515, published April 22, 1999, is not a proper 35 U.S.C. § 102(b) reference.

Accordingly, Applicants request respectfully that the denial of priority to Provisional Application 60/153,941 be withdrawn, that the earlier priority date be acknowledged for the present application, and that the rejection to Claims 1-7 over WO 99/19515 under 35 U.S.C. § 102(b) be withdrawn.

II. The Double Patenting Rejection Should Be Held In Abeyance

At pages 3- 5, the Office Action rejects Claims 1-7 under the doctrine of obviousness-type double patenting over U.S. Patent No. 6,524,793 in view of WO 99/19515. Applicants traverse respectfully.

Applicants request respectfully that the double patenting rejection be held in abeyance until such time as allowable subject matter has been identified. At that time, a Terminal Disclaimer may be filed if such is deemed appropriate at that time.

III. The Objection To The Claims Should Be Withdrawn

At page 3, the Office Action maintains the objection to Claim 7 under 37 C.F.R. § 1.75 as allegedly being a substantial duplicate of Claim 1. The Office Action alleges that Claims 1 and 7 are directed to the same Test Panel, and that the insertion

of "kit" in the preamble does not change the structural or functional limitations of these claims. The Examiner notes that the limitations related to "associated buffers" is not present in the claim. Applicants traverse respectfully.

Applicants submit respectfully that Claims 1 and 7 are not substantial duplicates. Without acquiescing in the propriety of the objection, and solely to further prosecution of the present application, Applicants amend Claim 7 herein to recite "and further comprising associated buffers, vials and supplemental reagents." Support for the amendment is found page 21, lines 1-2, which describes how kits may be prepared comprising the MAP Test Panel and associated buffers, vials and supplemental reagents. Accordingly, Applicants request respectfully that the objection to Claim 7 be withdrawn.

CONCLUSION

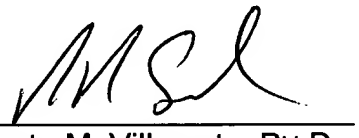
Applicants submit respectfully that the present application is in condition for allowance. Favorable reconsideration, withdrawal of the rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3500. All correspondence should be directed to our address given below.

AUTHORIZATION

Applicants believe there is no fee due in connection with this filing. However, to the extent required, the Commissioner is hereby authorized to charge any fees due in connection with this filing to Deposit Account 50-1710 or credit any overpayment to same.

Respectfully submitted,



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